

SAMUAL B. FRETWELL
CARL F. FRETWELL

IBLA 98-458

Decided March 16, 2001

Appeal from a decision of the Idaho State Office, Bureau of Land Management, declaring mining claims forfeited by operation of law because waiver certifications filed in lieu of maintenance fees were defective, and fees were not received. IMC 60002 through IMC 60013 and IMC 60015 through IMC 60022.

Reversed.

1. Mining Claims: Rental or Claim Maintenance Fees:
Generally--Mining Claims: Rental or Claim Maintenance
Fees: Small Miner Exemption

An assertion that a maintenance fee waiver certification met the regulatory requirements when signed by a family member on behalf of another family member who owned the claim, because 43 C.F.R. § 1.3 allows individuals to practice before the Department on behalf of family members, cannot be accepted. "Practice" is defined in 43 C.F.R. § 1.2 to expressly exclude "the preparation and filing of an application," and such a certification is properly considered to be an application.

2. Mining Claims: Rental or Claim Maintenance Fees:
Generally--Mining Claims: Rental or Claim Maintenance
Fees: Small Miner Exemption

A maintenance fee waiver certification signed by an individual on behalf of the claim owner, which is filed without documentation showing the authority of the individual to do so, is defective, but may be cured under 43 C.F.R. § 3833.4(b). A power of attorney filed in response to a call for information under 43 C.F.R. § 3833.4(b), which is executed after the filing of a waiver certification, may be considered a proper authorization under the doctrine of ratification, when there is no prejudice to the Government or third parties.

APPEARANCES: William F. Schroeder, Esq., and Carol DeHaven Skerjanec, Esq.,
Vale, Oregon, for appellants.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Samual B. Fretwell and Carl F. Fretwell have jointly appealed from a July 23, 1998, decision of the Idaho State Office, Bureau of Land Management (BLM), declaring 20 unpatented mining claims, the Twin Springs #1-#12 and #14-#21 (IMC 60002 through IMC 60013 and IMC 60015 through IMC 60022), forfeited by operation of law because waiver certifications filed on August 29, 1996, in lieu of the \$100 per claim maintenance fee required by 30 U.S.C. § 28f(a) (1994), due on or before August 31, 1996, were defective and the required maintenance fees were not received.

The subject mining claims were located in March 1981 and were conveyed to Carl F. Fretwell and Forest E. Fretwell by quitclaim deed dated June 1, 1987. By quitclaim deed dated August 1, 1993, Carl and Forest conveyed their interests in the Twin Springs #1-#5 and #16-#20 to Samual B. Fretwell. On August 18, 1993, Samual and Carl filed small miner exemption forms for 10 claims each as follows: Samual--Twin Springs #1-#5 and #16-#20; Carl--Twin Springs #6-#12, #14-#15, and #21. Forest's relinquishment of interest in, inter alia, the Twin Springs #6-#12, #14, #15, and #21 was included with those filings.

Under 30 U.S.C. § 28f(a) (1994), Congress requires the holder of an unpatented mining claim, mill site, or tunnel site to pay a maintenance fee of \$100 per claim or site on or before August 31 during the years 1994 through 1998. Failure to pay the maintenance fee "conclusively constitute[s] a forfeiture of the unpatented mining claim, mill or tunnel site by the claimant and the claim shall be deemed null and void by operation of law." 30 U.S.C. § 28i (1994). The Secretary, however, has the discretion to waive the fee for a small miner who holds not more than 10 mining claims, mill sites, or tunnel sites, or combination thereof, on public lands and has performed assessment work required under the Mining Law of 1872. 30 U.S.C. § 28f(d) (1) (1994). BLM implemented that statute with a regulation requiring an owner to file "proof of the * * * conditions for exemption * * * with the proper BLM office by the August 31 immediately preceding the assessment year for which a waiver is sought." 43 C.F.R. § 3833.1-6(d) (2) (1998). Proof was to be in the form of a statement containing, inter alia, the names, addresses, and signatures of all owners maintaining an interest in the claim. 43 C.F.R. § 3833.1-7(d) (1998).

On July 21, 1994, Carl F. Fretwell filed with BLM a waiver certification for 10 mining claims, the Twin Springs #6-#12, the Twin Springs #14, the Twin Springs #15, and the Twin Springs #21. On the same date, Samual B. Fretwell filed with BLM a waiver certification for 10 claims, the Twin Springs #1-#5 and the Twin Springs #16-#20. On August 9, 1995, Carl F. Fretwell filed a waiver certification for his 10 claims and, the next day, Samual B. Fretwell filed a waiver certification for his 10 claims. On August 29, 1996, waiver certifications were again filed, but the one for

Samual's claims was signed "Samual B. Fretwell by Forest E. Fretwell" and the one for Carl's claims was signed "Carl F. Fretwell by Forest E. Fretwell."

Section 8 of the waiver certification form, Form 3830-2 (July 1994), reads:

This waiver must be signed by all of the owners or their designated agent. If an agent is designated, a statement appointing the agent, signed by all of the owners, must be submitted with this certification, if a designation of agent is not currently on file with the BLM State office where your claims and sites are recorded.

On June 11, 1998, BLM sent a letter to Forest E. Fretwell, with copies to Carl F. and Samual B. Fretwell, notifying him of defects in the August 29, 1996, filings and allowing 30 days from receipt of the letter within which to cure the defects: 1/

It appears from our records that you are not an owner of these claims, and there is no power of attorney on file to authorize you to sign for Carl or Samual Fretwell. If you are in fact an owner, or if a power of attorney exists, please provide documentation of this fact, effective prior to August 31, 1996. * * *

Lack of co-owner's names, addresses, and/or signatures are curable defects (as long as at least one owner has signed). Enclosed are copies of the waiver(s) in question. If the requested information is not received within 30-days of receipt of this letter, a decision will be issued removing from our records, the names of those claimants for whom no signature was received. In the case where no owner of record has signed the waiver, and no maintenance fees were paid, a decision will be issued rejecting the waiver, and the claims will be closed. [2/]

1/ The regulation at 43 C.F.R. § 3833.4(b) (1998) provides:

"Failure to file the complete information required in §§ 3833.1-2(b), 3833.1-7(d)-(f), 3833.2-4(a), 3833.2-4(b), 3833.2-5(b) and 3833.2-5(c), when the document is otherwise filed on time, shall not be conclusively deemed to constitute an abandonment or forfeiture of the claim or site, but such information shall be submitted within 30 days of receipt of a notice from the authorized officer calling for such information. Failure to submit the information requested by the decision of the authorized officer shall result in the mining claim, mill site, or tunnel site being deemed abandoned by the owner."

2/ On the same date, BLM sent a similar letter to Nancy Fretwell relating to the waiver certification filed on Aug. 15, 1997, for Samual B. Fretwell's claims which had been signed "Samual B. Fretwell by Nancy Fretwell." The rationale set forth herein for our decision is equally applicable to that certification.

On July 8, 1998, Carl F. Fretwell filed a power of attorney with BLM, dated July 3, 1998, appointing Forest, Samuel, or Nancy Fretwell as his attorneys-in-fact for purposes of signing his name to any documents needed to be filed with BLM relating to his 10 mining claims. The next day, Samuel B. Fretwell filed a power of attorney dated July 4, 1998, with BLM designating Forest, Carl, or Nancy Fretwell as his attorneys-in-fact for the same purpose for his 10 mining claims. Each of those powers of attorney stated: "This appointment began on January 1, 1996 and continues until revoked by me."

In its July 23, 1998, decision, BLM found both powers of attorney to be defective because they were executed after August 31, 1996. It held that the waivers filed on August 29, 1996, were not valid because they were filed by Forest E. Fretwell, who had no ownership interest in the claims and no power of attorney in effect on or before August 31, 1996. Accordingly, BLM rejected the waiver filed for the 1997 assessment year and declared the claims forfeited by operation of law. Samuel B. and Carl F. Fretwell jointly appealed.

In their statement of reasons, appellants argue that BLM erred in its conclusion that the effective dates of the powers of attorney at issue are the dates they were executed. They assert that at the time Forest E. Fretwell signed a waiver certification for each claimant, an agency relationship did in fact exist even though it had not been expressed in writing. Appellants contend the regulations do not require that there be written evidence of the agency or that the writing have preceded the agent's action. They further assert that the regulations in 43 C.F.R. §§ 1.2 through 1.6 allow a family member to act as a representative before the Department and the signature of the representative is certification that he is qualified to represent the particular party in that matter.

[1] First, with respect to appellants' argument that the Department's regulations at 43 C.F.R. §§ 1.2 through 1.6 support their position that an agency relationship is established by Forest's signature on the subject waiver certifications, we must reject such an argument. The regulations cited by appellants govern "the participation of individuals in proceedings, both formal and informal, in which rights are asserted before, or privileges sought from, the Department of the Interior." 43 C.F.R. § 1.1. The regulations at 43 C.F.R. § 1.3 define who may practice before the Department. An individual may practice in connection with a particular matter on his or her own behalf or on behalf of a member of his or her family. 43 C.F.R. § 1.3(b)(3)(i). ^{3/} "Practice" in this sense is specifically defined in 43 C.F.R. § 1.2(c) as

^{3/} Although appellants assert in their statement of reasons at 3 that "[t]he agents in this case are presumptively members of the same family as the principals for whom the agents signed," appellants do not disclose the exact family relationship of the parties.

any action taken to support or oppose the assertion of a right before the Department or to support or oppose a request that the Department grant a privilege; and the term "practice" includes any such action whether it relates to the substance of, or to the procedural aspects of handling, a particular matter. The term "practice" does not include the preparation or filing of an application, the filing without comment of documents prepared by one other than the individual making the filing, * * *. [Emphasis added.]

The definition of "practice," quoted above, expressly excludes from its purview "the preparation or filing of an application." The law required that the holder of an unpatented mining claim file a \$100 claim maintenance fee on or before August 31 during the years 1994 through 1998. The Secretary also provided for a waiver of those fees for holders of not more than 10 mining claims, mill sites, or tunnel sites. The waiver of those fees, however, was not automatic. The owner had to apply for the waiver by timely filing a waiver certification. 43 C.F.R. § 3833.1-7(d) (1998). A waiver would only be granted if the owner met all the maintenance fee waiver conditions. 43 C.F.R. § 3833.1-6(a) (1998). The waiver certifications at issue in this case were clearly applications within the meaning of 43 C.F.R. § 1.2(c). Thus, the mere signing of the waiver certifications by Forest E. Fretwell, who was not the owner of the claims, did not constitute practice before the Department, regardless of his family relationship to the claim owners, such that his signature alone certified his qualifications to represent Carl F. and Samuel B. Fretwell.

[2] The next question presented is whether BLM correctly concluded that the curable defect in the waiver certifications in question could only be cured by a power of attorney executed prior to August 31, 1996. It did not.

The regulation at 43 C.F.R. § 3833.1-7 sets forth the filing requirements for maintenance fee waivers, including the submission of a statement containing, inter alia, "[t]he signatures of all the owners of the mining claims and sites." 43 C.F.R. § 3833.1-7(d) (5) (1998). The regulation at 43 C.F.R. § 3833.4(b) (1998) provides, inter alia, that the failure to include the information required by 43 C.F.R. § 3833.1-7(d) is a curable defect, and that "[s]uch information shall be submitted within 30 days of receipt of a notice from the authorized officer calling for such information." 43 C.F.R. § 3833.4(b). BLM called for evidence that Forest E. Fretwell was an owner of the claims or that he was authorized to sign for the owners. In response to BLM's request, powers of attorney allowing Forest E. Fretwell to sign were submitted.

For the following reasons, we conclude that the powers of attorney provided by the parties were sufficient evidence of the authority to take the action of signing on behalf of the owners in August 1996. A power of attorney is an instrument granting someone authority to act as agent or attorney-in-fact for the grantor. Black's Law Dictionary, 1191 (7th ed.

1999). It is evidence of an agency relationship. See 3 Am. Jur. 2d Agency § 23 (1986). In construing a power of attorney and determining its effect, the principles of the law of agency apply. 3 Am. Jur. 2d Agency § 30 (1986). One of those principles is the doctrine of ratification, which is defined as the confirmation and acceptance of a previous act, thereby making it valid and effective from the moment it was done. Black's Law Dictionary, 1268 (7th ed. 1999); see Restatement (Second) of Agency, § 82 (1958). The effect of a ratified or confirmed act is essentially the same as an authorized act. Manning v. Twin Falls Clinic & Hospital, Inc., 830 P.2d 1185, 1192 (Idaho 1992).

In Dudley S. Long, 16 IBLA 18, 21 (1974), a case in which the Board affirmed BLM's rejection of a preference right claim to an isolated tract of land involved in a public sale, we stated: "The Department has held that a principal may ratify and adopt the acts of one who has acted on the assumption that he is an agent. Such ratification '* * * related back and is equivalent to a prior authority.'" Missouri Pac. R.R. Co. v. Choctaw, Okla. & G. R.R. Co. (On Reconsideration), 52 L.D. 730, 731 (1929). The Board made clear in Dudley, however, that each case would be examined to determine if ratification were appropriate: "However, such 'after the fact' ratification will be ignored where substantial confusion results, and the Department is free to construe actions so as to avoid prejudice to either the Government or third parties. William G. Taylor, 60 I.D. 227 (1948)." Id. at 22. In the Dudley case, the Board refused to apply the doctrine of ratification finding that the rights of a third party, the high bidder at the sale, would be prejudiced.

In this case, BLM requested evidence that Forest E. Fretwell was authorized to sign appellants' names on the waiver certifications. Appellants provided that evidence. They submitted powers of attorney allowing Forest E. Fretwell, and others, to act for them in certain circumstances. Under the doctrine of ratification, those powers of attorney provided authority for the signing. In this situation, there is no prejudice to the Government and no third party rights are involved.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is reversed.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

Lisa Hemmer
Administrative Judge

